



FH

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/153462

PRELIMINARY RECITALS

Pursuant to a petition filed October 17, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance, a hearing was held on December 04, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner is not disabled.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: No Appearance

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. Petitioner is 30 years old. He has a 10th grade education.
3. On April 24, 2013, the Petitioner submitted an application for Medical Assistance Disability. On October 10, 2013, the agency determined the Petitioner is not disabled.

4. Petitioner has a history of bilateral hip pain with diagnoses that include femoroacetabular impingement of the cam type with chondromalacia in the left femoral head, osteoarthritis and torn labrum.
5. On May 10, 2012, the Petitioner was evaluated by a physician. He complained of right hip pain and reported that he cannot run, swim or work out like he used to due to discomfort in his hips, knees, ankles and feet. He was noted to walk without a limp. It was noted that he had no pain with normal range of motion in his hips and knees.
6. In October, 2012, the Petitioner was evaluated again by a physician. He complained of worsening bilateral hip pain but reported the pain in his left hip was worse than the right. He reported pain every day, worsening with weightbearing and movement. He reported that it affects his daily activities. He also reported the pain improved with rest but it limits his ability to twist, bend, walk, dress, bathe, toilet and do household chores. The physician noted moderately limited left hip range of motion with pain and normal right hip range of motion. On October 31, 2012, Petitioner had imaging performed and the physician indicated a suspicion for complex labral tearing involving most or all of the labrum.
7. On November 28, 2012, physician notes indicate diagnoses of cam type acetabular impingement, early osteoarthritis, labral tearing and mild underlying chondromalacia. The Petitioner reported mild low back pain and bilateral hip pain with activity. He reported he usually does not have pain at night or below his knees. He was noted to walk without a limp. The physician also noted left hip pain with internal rotation in flexion.
8. On December 7, 2012, Petitioner was evaluated by a physician. The physician noted no pain in the hips with a gentle log roll and some limitation with range of motion. He also noted an abnormal, nonspecific limp. Arthroscopy was discussed.
9. On January 6, 2013, Petitioner was evaluated. The physician noted that Petitioner's constellation of symptoms seem to change each time he talks with the Petitioner. Petitioner now reported more pain with his right hip. The physician recommended steroid injections for pain. The Petitioner had injections which provided 3 – 4 days of pain relief.
10. On June 19, 2013, the Petitioner was evaluated by a physician. He reported constant bilateral hip pain, especially at night and in the morning. He reported the pain is worse in his left hip. The physician noted that Petitioner has mildly decreased internal rotation bilaterally. He noted good range of motion, with pain beyond 95 degree flexion. The x-rays indicated no significant changes from previous images in 2012.
11. On his April, 2013 disability application, the Petitioner reported a history of osteoarthritis in his hips, a labrum tear, impingement, spurs and degenerative disease. He reported that his conditions affect his ability to walk, stand, sit, stoop, kneel, crouch, crawl, grasp, write, twist, climb, bend, pull and lift. He reported that household chores are difficult and he has no activities or hobbies. He reported that he seldom has social contact. Petitioner indicated in the application that he has not worked for 15 years.
12. On September 5, 2013, the Petitioner had a psychological evaluation. He was noted to have a history of hip pain, depression, arthritis, prematurity and reactive airway disease. His gait was noted to be abnormal with a nonspecific limp. Petitioner reported spending most of his time at home. He reported eating 2 – 3 meals/day, daily baths, use of microwave and stove, able to do laundry. He reported that he purchases his food and clothing, makes his own appointments, takes out the trash, cleans his room, "runs around with the kids", and walks to the corner store. The physician noted his cognitive skills are intact, that he had no attention, concentration or memory problems. He was able to understand, remember and carry out instructions. He responded appropriately to questions. The physician noted that Petitioner appears to be employable from a psych perspective.

DISCUSSION

To be eligible for MA, an adult under age 65 must be disabled, blind, pregnant, or the caretaker of minor children. Wis. Stat., §§49.46(1) and 49.47(4). To qualify as disabled, a person must meet the definition of that term as it is used for SSI purposes. Wis. Stat., §49.47(4)(a)4.

The applicable SSI disability standards are found in the Code of Federal Regulations, Title 20, Part 416, Subpart I, and by reference Appendices 1 and 2, Subpart P, Part 404. Specifically, to be disabled means to be unable to engage in any substantial gainful activity because of a medically determinable physical or mental condition which will, or has, lasted at least twelve months. To determine if this definition is met, the applicant's current employment status, the severity of his medical condition, and his ability to return to vocationally relevant past work or to adapt to new forms of employment are evaluated in that sequence. 20 C.F.R. §§416.905 and 416.920.

The SSI regulations require a five-step process. First, if the person is working at a job that is considered to be substantial gainful employment, he is found to be not disabled without further review. If he is not working, the DDB must determine if he has a "severe impairment." A severe impairment is one that limits a person's ability to do basic work activities. 20 C.F.R. §416.921. The DDB found that Petitioner is not working and that he has a severe mental health and physical impairment.

The third step is to determine if the impairment meets or equals a listed impairment found at Appendix 1, Subpart P, Part 404. The listings are impairments that are disabling without additional review. 20 C.F.R. §416.925(a). The DDB found that petitioner meets or equals no listing for his mental health and physical impairments. I agree. The listings for mental impairments require loss of cognitive functioning leading to marked impairments in daily living and functioning. See Listings 12.02 and 12.04. Petitioner has mental health impairments but they are not at the level to meet the listings as there is no evidence that he is markedly limited as a result of the impairments.

With regard to his physical impairment, the applicable listing states as follows:

1.01 Category of Impairments, Musculoskeletal

1.02 Major dysfunction of a joint(s) (due to any cause): Characterized by gross anatomical deformity (e.g., subluxation, contracture, bony or fibrous ankylosis, instability) and chronic joint pain and stiffness with signs of limitation of motion or other abnormal motion of the affected joint(s), and findings on appropriate medically acceptable imaging of joint space narrowing, bony destruction, or ankylosis of the affected joint(s). With:

A. Involvement of one major peripheral weight-bearing joint (i.e., hip, knee, or ankle), resulting in inability to ambulate effectively, as defined in 1.00B2b;

OR

B. Involvement of one major peripheral joint in each upper extremity (i.e., shoulder, elbow, or wrist-hand), resulting in inability to perform fine and gross movements effectively, as defined in 1.00B2c.

...

20 CFR Part 404, Subpart P, Appendix 1, §1.01, et seq., online at <http://www.ssa.gov/disability/professionals/bluebook/AdultListings.htm>.

Femoroacetabular impingement is a condition that generally occurs in persons who are middle-aged or younger and occurs when the femoral head rubs abnormally or does not have full range of motion in the

acetabular socket. The type that Petitioner has is caused by an excess of bone along the upper surface of the femoral head. Pain may occur within normal range of motion during actions not normally associated with a need for physical demand such as sitting down and standing up. "Femoroacetabular impingement syndrome: Nonarthritic hip pain in young adults", Can Fam Physician 54 (1): 42–7, Dooley PJ (January 2008). "Femoroacetabular Impingement (FAI)". Hipfai.com. March 18, 2013. Chondromalacia, also known as “runner’s knee,” is a condition where the cartilage on the undersurface of the patella (knee cap) deteriorates and softens.

The evidence is insufficient to demonstrate that the Petitioner is unable to ambulate effectively. While there is some evidence that he has some abnormality in his gait and some limited range of motion in his hips, there is also evidence that some professionals opined that his gait is normal and that range of motion is near normal. With regard to pain with ambulation, the evidence is inconsistent with some reports that by Petitioner that he is unable to ambulate more than a few minutes without pain and unable to perform daily activities to other recent reports that he is able to ambulate effectively and perform many household chores. Based on the evidence and the requirements of the listings, I agree with the DDB that the Petitioner does not meet the listing for physical impairment.

The fourth and fifth steps of the analysis occur if the impairments do not meet the listings. The DDB must determine whether the person is able to perform past jobs. If not, then the agency must determine if the person can do any other types of work in the society that would be considered substantial gainful activity. 20 C.F.R. §416.960. The DDB determined that Petitioner could perform sedentary unskilled work based on his age, education level and impairments. Based on the evidence, I concur with the DDB determination that the Petitioner is able to perform this level of work and is not, therefore, disabled as defined by the federal regulations.

CONCLUSIONS OF LAW

The agency properly determined the Petitioner is not disabled.

THEREFORE, it is **ORDERED**

That the petition be, and hereby is, dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

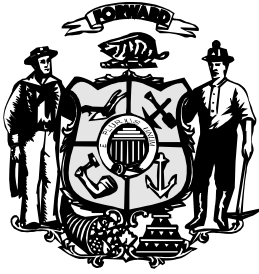
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 10th day of January, 2014

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 10, 2014.

Milwaukee Enrollment Services
Disability Determination Bureau